

O'Keefe & Associates Law Corp., P.C.
130 Newport Center Dr., Ste. 140
Newport Beach, CA 92660
Telephone: 949.334.4135
Sean A. O'Keefe, Esq.
sokeefe@okeefelc.com
Counsel to JW Mitchell Company, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

SEARS HOLDINGS CORPORATION, *et al.*,¹

Debtors

Chapter 11

Case No. 18-23538 (RDD)

(Jointly administered)

**SUPPLEMENT TO OBJECTION OF JW MITCHELL COMPANY, LLC
TO LEASE ASSUMPTION CURE COSTS**

¹ 1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

JW Mitchell Company, LLC (“JW Mitchell”), hereby files this Supplement to its previously filed Objection (the “Cure Objection”) [Docket No. 1848] to (a) the *Supplemental Notice Of Cure Costs And Potential Assumption And Assignment Of Executory Contracts And Unexpired Leases In Connection With Global Sale Transaction* [Docket No. 1774] (the “Supplemental Assumption Notice”) (b), to the extent applicable, the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (“Potential Assumption Notice”) [Docket No. 1730] (the “Assumption Notice”; (c) the Global Asset Sale Transaction, as described and defined in the *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730] (the “Successful Bidder Notice”), and to d) to the *Notice Of Assumption And Assignment Of Additional Designatable Leases* [Docket No. 3298] (the “Assumption Notice”).

In support of this Supplement, JW Mitchell states as follows:

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and a number of its affiliates, including Kmart Corporation (“KMart”), filed voluntary petitions under chapter 11 of the Bankruptcy Code.
2. As of the Petition Date, JW Mitchell was the landlord and Kmart (“Debtor”) was the tenant under a lease of nonresidential real property dated September 1, 2001, as amended (the “Lease”).
3. KMart occupies the property commonly known as 3100 Milliken Avenue, Eastvale, California (the “Property”), pursuant to the Lease.
4. On January 18, 2019, the Debtor served the Potential Assumption Notice.
5. On January 23, 2019, the Debtor served the Supplemental Assumption Notice.

6. On April 19, 2019, Transform Holdco, LLC (“Transform”) filed the Assumption Notice wherein Transform advised JW Mitchell it intended to assume the Lease, and restated the zero-dollar (\$0.00) cure figure set forth in the Supplemental Notice.

7. As JW Mitchell documented in the Objection, the Debtor’s cure amount figure is in error. The Debtor is in default of its monetary obligations under the Lease and owes real estate taxes and other fees.

8. As of the date of the Supplement Notice, JW Mitchell’s monetary cure claim was an amount not less than \$218,971.72. This sum was comprised of \$212,911.73 in the form of unpaid real estate taxes and \$6,060 in attorneys fee and costs.

9. This Supplement to the Cure Objection is being filed to update the foregoing cure figure. *As of this writing*, the following sums are now due under the Lease:

Charges	Amount Due
Property Tax Bill for 7/1/18-12/31/18 ²	122,655.67
Property Tax Bill for 1/1/19-6/30/19	212,911.73
May 2019 Rent	292,315.10
Legal Fees	13,480.00
Total	641,362.50

10 A true and correct copy of the original recorded Memorandum of Lease is attached to the Objection as Exhibit “1” , and the First Amendment to the Lease is attached thereto as Exhibit “2”. The May 2019 rent invoice, which includes the property tax obligations owed, is attached to this Supplement as Exhibit “1.”

10. To assume the Lease, Transform must pay the foregoing cure figure.

11. This Supplement to the Cure Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and

² The tax bill was \$212,911.72. However, KMart paid \$90,256.06 toward the balance due.

(b) will accrue on an ongoing basis between the filing of this Supplement to the Cure Objection and the actual assumption date of the Lease. JW Mitchell expressly reserves its right to amend or supplement the Cure Objection though and including the effective date of any proposed assumption and assignment of the Lease.

Dated: April 27, 2019

/s/ Sean A. O'Keefe

Sean A. O'Keefe, Esq.
OKEEFE & ASSOCIATES LAW CORP., P.C.
130 Newport Center Drive, Suite 140
Newport Beach, CA 92660
Telephone: (949) 334-4135
Email: sokeefe@okeefelc.com

CERTIFICATE OF SERVICE

I, SEAN A. O'KEEFE, of full age, hereby certifies as follows:

1. I employed by OKeefe & Associates Law Corporation, P.C. (the "Firm").
2. The Firm's business address is 130 Newport Center Drive, Suite 140, Newport Beach, CA 92660.
3. The Firm is counsel to JW Mitchell Company, LLC in connection with the above-referenced cases.
4. On April 27, 2019, the *Supplement To Objection Of JW Mitchell Company, LLC To Lease Assumption Cure Costs* (the "Supplement") was electronically filed with the United States Bankruptcy Court for the Southern District of New York, thereby causing the parties entitled to receive notice via the Court's ECF system to be served. In addition, on that date the Supplement was served upon all parties on the annexed service list by the deposit of this document in a U.S. Mail post-office box in Irvine, California, with the required first class postage affixed thereto.
5. I certify under penalty of perjury that the foregoing statements made by me are true and correct.

Dated: April 27, 2019

/s/ Sean A. O'Keefe

Sean A. O'Keefe, Esq.
OKEEFE & ASSOCIATES LAW CORP., P.C.
130 Newport Center Drive, Suite 140
Newport Beach, CA 92660
Telephone: (949) 334-4135
Email: sokeefe@okeefelc.com

Service List

Hon. Judge Robert D. Drain United States Bankruptcy Court for the Southern District of New York 300 Quarropas Street, Room No. 248 White Plains, NY 10601	Paul Schwartzberg, Esq. Office of the U.S. Trustee for Region 2 201 Varick Street, Suite 1006 New York, NY 10014
Weil, Gotshal & Manges LLP Ray C. Schrock Jacqueline Marcus Garrett A. Fail Sunny Singh 767 Fifth Avenue New York, NY 10153	Transform Holdco, LLC c/o ESL Partners, Inc. Kunal S. Kamlani Harold Talisman 1 170 Kane Concourse, Suite 200 Bay Harbor Islands, FL 33154
Sears Holdings Corporation Attn: General Counsel 3333 Beverly Road Hoffman Estates, IL 60179	Cleary Gottlieb Steen & Hamilton LLP Christopher E. Austin Benet J. O'Reilly Sean A. O'Neal One Liberty Plaza New York, NY 10006
Akin Gump Strauss Hauer & Feld LLP Ira S. Dizengoff Philip C. Dublin Abid Qureshi Sara L. Brauner One Bryant Park New York, NY 10036	